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**OFFICE OF PETITIONS**

In re Application	:
Robert Zayatz	:
Application No. 09/667,983	: DECISION ON APPLICATION
Filed: September 22, 2000	: FOR PATENT TERM ADJUSTMENT
Patent No. 6,671,187	:
Issued: December 30, 2003	:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(b)," filed January 5, 2004, which is being treated as a petition under 37 C.F.R. §1.705(d). Patentee requests that the determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from zero (0) days to seventeen (17) days.

The application for patent term adjustment is **DISMISSED**. Patentee is given **thirty (30) days** to respond to this decision. No extensions of time will be granted under 37 C.F.R. § 1.136(a).

On December 30, 2003, the above-identified patent issued. The patent stated that the patent term adjustment (PTA) is zero (0) days. On January 5, 2004, patentee timely<sup>1</sup> submitted an application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is seventeen (17) days.

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<sup>1</sup> The instant application for patent term adjustment was filed within 30 days of issuance of the patent.

Patentee asserts entitlement to a patent term adjustment of seventeen (17) days on the basis that the patent issued more than three years from the filing date of the application.

Patentee specifically states that the patent issuing from the application is not subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of zero (0) days based on an adjustment for applicant's delays of forty-three (43), five (5) and thirty-four (34) days, all pursuant to 35 U.S.C. 154(b)(2)(C)(iii) and 37 C.F.R. § 1.704(b). Applicant's delay of eighty-two (82) days has been reviewed and found to be correct.

The instant application was filed on September 22, 2000. The application did not issue into a patent until December 30, 2003. Accordingly, PTO delay should have been assessed as ninety-nine (99) days, pursuant to 35 U.S.C. 154(b)(1)(B) and 37 C.F.R. § 1.702(b).

However, patentee should have also been assessed delay pursuant to 37 C.F.R. § 1.704(c)(8) on two additional occasions. The first occurred when patentee filed an IDS on March 12, 2002, after an amendment had been previously filed on February 15, 2002. Accordingly, applicant delay of twenty-eight (28) days should have been assessed. Secondly, patentee should have been assessed applicant delay of twenty-seven (27) days for the filing of an IDS on September 24, 2002, when an amendment had been previously filed on August 28, 2002.

In view thereof, the Patent Term Adjustment indicated in the patent is **zero (0) days** (99 days of PTO delay, reduced by 137 days (82+28+27) of applicant delay).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e).

The application file is being forwarded Files Repository.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (703) 305-0272.

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*for*

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